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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,417	12/22/2004	Patrick Cornelis Nicolaas Rensen	101137-60	7547

27387 7590 01/05/2009

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EXAMINER	
HINES, JANA A	

ART UNIT	PAPER NUMBER
1645	

MAIL DATE	DELIVERY MODE
01/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/519,417	**Applicant(s)** RENSEN ET AL.	
	Examiner JaNa Hines	**Art Unit** 1645	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *None*.
   Claim(s) objected to: *None*.
   Claim(s) rejected: *17,18,22-28 and 30-32*.
   Claim(s) withdrawn from consideration: *19,20,29 and 33*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Mark Navarro/
Primary Examiner, Art Unit 1645

The rejection of claims 18, 22, 23, 25, 27-31 under 35 U.S.C. 102(b) as being anticipated by Quarfordt et al., is maintained for reasons already of record. The rejection is on the grounds that Quarfordt et al., teach a method for treating a mammal suffering from or is at risk of developing sepsis or septic shock comprising administering to such mammal a therapeutically effective amount of a peptide and pharmaceutically acceptably adjuvants where the peptide comprises the amino acid sequence selected from the group consisiting of SEQ ID NO:11, 2 and 1. Quarfordt et al., teach the peptide binding to lipoteichoic acids and wherein the composition is for treating a sepsis or septic shock in mammals, wherein shock is caused by Gram-negative or Gram-positive bacteria.

Applicants arguments are not persuasive and do not overcome the rejections of record. Because the administration of apoC1 having SEQ ID NO:I and 11 was clearly taught in the prior art, it is irrelevant that the prior art did not recognize the key aspect of the apolipoproteins ability to treat sepsis or septic shock. Therefor applicants' argument is not persuasive and the rejection is maintained.

The rejection of claims 17-18 and 22-32 under 35 U.S.C. 103(a) as being unpatentable over Oosten et al., in view of Quarfordt et al., is maintained for reasons already of record. The rejection is on the grounds that it would have been prima facie obvious at the time of applicants' invention to apply the method for treating a mammal suffering from or is at risk of developing sepsis or septic shock comprising administering a therapeutically effectively amount of a peptide and pharmaceutically acceptably adjuvants where the apoCl peptide as taught by Oosten et al., wherein the modification includes a peptide comprising SEQ ID NO:1 or 11 as taught by Quarfordt et al., in order to aide in liver perfusion and isolation of contaminated blood. One of ordinary skill in the art would have a reasonable expectation of success by including ApoCl within the composition of method of treatment because the art teaches the administration of ApoCl and ApoE together. Furthermore, ApoCl and ApoE are known to produced in emulsion chylomicron compositions; and Oosten et al., teach that emulsion chylomicron compositions target LPS and prevent the further binding of LPS. Furthermore, no more than routine skill would have been required to include the ApoCl with the emulsions comprising ApoE when Oosten et al., in view of Quarfordt et al., teach that combining the apolipoproteins before administration protects against endotoxin death.

In this case, contrary to applicants assertions, one of ordinary skill in the art would not need to assume anything because the art clearly teaches administering ApoC and ApoE together. One of ordinary skill in the art would have a reasonable expectation of success by including ApoCl within the composition of method of treatment because the art teaches the administration of ApoCl and ApoE together. Furthermore, the well known process of administration a well known composition including ApoC and E, comprising SEQ ID NO1 and 11 does not become patentable upon the discovery of a new property for that same composition; i.e., the ability to treat sepsis or septic shock. As stated above, the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer. Therefore, no more than routine skill would have been required to administer the peptide composition when the prior art teaches that emulsion compositions target LPS;
prevent the further binding of LPS and treat sepsis or septic shock. Therefore the rejection is maintained because applicants arguments are not found persuasive.